IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 20049 of 2007(J)

OS.573/2003 of MUNSIFF COURT, THALIPARAMBA
.....

PETITIONER: /1ST PLAINTIFF.

PAPPINISSERIL PUTHEAMVETTIL
SREEDHARAN NAMBIAR, AGED 65 YEARS, PENSIONER,
NEW NADUVIL AMSOM, NADUVIL DESOM.

BY ADV. SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENTS: /2ND PLAINTIFF AND 1 TO 11 DEFENDANTS.
----

1. VENUGOPALAN NAMBIAR, AGED 55 YEARS,
PENSIONER, NEW NADUVIL AMSOM, NADUVIL DESOM,
NOW RESIDING AT JIDDA.

2. JANAKI AMMA, AGED 73 YEARS,
RESIDING AT NEW NADUVIL AMSOM, NADUVIL DESOM.

3. THANKAMANI AMMA, AGED 66 YEARS,
RESIDING AT NEW NADUVIL AMSOM, NADUVIL DESOM.

4. KUNHIKRISHNAN NAMBIAR, AGED 59 YEARS,
RESIDING AT NEW NADUVIL AMSOM, NADUVIL DESOM.

5. PADMAVATHI AMMA @ PADMINI AMMA, AGED 55
YEARS,RESIDING AT NEW NADUVIL AMSOM, NADUVIL DESOM

6. LEELAVATHY, AGED 53 YEARS,
RESIDING AT NEW NADUVIL AMSOM, NADUVIL DESOM.

7. SANTHAKUMARI, AGED 50 YEARS,
RESIDING AT NEW NADUVIL AMSOM, NADUVIL DESOM.

8. GOPALAKRISHNAN, AGED 45 YEARS,
RESIDING AT NEW NADUVIL AMSOM, NADUVIL DESOM.

9. PREMAKUMARI, AGED 46 YEARS,
RESIDING AT NEW NADUVIL AMSOM, NADUVIL DESOM.

10. PADMAVATHI, AGED 51 YEARS,
RESIDING AT NEW NADUVIL AMSOM, NADUVIL DESOM.

11. PAPPINISSERI PUTHENVEETTIL ARUN,
S/O.PADMAVATHY, AGED 29 YEARS,
AGRICULTURIST.

12. PAPPINISSERI PUTHENVEETTIL DEVAKI AMMA,
D/O.LAKSHMI AMMA, AGED 85 YEARS,
NO OCCUPATION.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 20049 OF 2007

= = = = = = = = = = = = = = =

Dated this the 29th day of June, 2007.

J U D G M E N T

This writ petition is filed to quash the order in Ext.P1 passed by the learned Munsiff, Thaliparamba. At the out set I may like to state that the order passed by the learned Munsiff is erroneous and the approach is incorrect. The suit is one for partition and also for damages for the trees cut and removed from the property. Originally the value of the trees cut were shown as 1,29,000/- or so. A Commission was issued and the Commissioner valued it about Rs.41,000/-or so. On that the plaintiff filed an objection and also an application seeking to remit the Commissioner's plan and report. As per the averments in the remitting application the plaintiff has shown the value of trees cut as more than three lakhs. The Munsiff immediately instead of considering the application passed an order and directed the plaintiff to take back the plaint and present it before the Sub Court. When the plaintiff was forced to take back the plaint, he did so and presented it before the Sub Court. The Sub Court held that since the valuation shown in the plaint is only about

Rs.73,000/- there is no jurisdiction of that Court to entertain it and therefore returned the plaint to the Munsiff Court. After receiving it also the Munsiff did the same thing and it is at this stage the writ petitioner has come up.

2. When an application for remitting the Commissioner's plan and report is filed what the Court has to do is to consider whether there are sufficient grounds for doing so. The Court is not expected to travel beyond the prayer, take isolated sentences from the petition and decide that the Court has no jurisdiction to entertain the suit. This is absolutely an erroneous approach. The learned Munsiff has also to be told that whenever the question of jurisdiction arises, the ouster of jurisdiction comes only when the plaint is amended and valuation shown exceeds the pecuniary jurisdiction limit of the Court. Till that time the Court has no power to return the plaint at all. This also has to be borne in mind by the learned Munsiff in future cases.

3. Now, the question to be adjudicated before the Court is only regarding the correctness of the Commissioner's report. The Court may permit the parties to adduce their evidence or argument and decide whether the application for remission requires consideration or not. Therefore, the order passed by the

learned Munsiff returning the plaint is set aside and the Munsiff is directed to consider the application for remitting the Commissioner's plan and report, then pass an order thereon and thereafter if the Court at any stage finds that by virtue of the report of the Commissioner that the plaint valuation will go above the jurisdiction of the Court then it has to direct the plaintiff to file an application for amendment of the plaint and thereafter proceed in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-